

1, 2023, the Court construed the Petition as an unauthorized second or successive Motion to Vacate which was dismissed for lack of jurisdiction and, alternatively, the Court denied Petitioner's claims for coram nobis relief pursuant to the All Writs Act, 28 U.S.C. § 1651. [Doc. 2]. Petitioner filed a Notice of Appeal on November 27, 2023, which is presently pending before the Fourth Circuit in Case No. 24-6013. [See Doc. 5].

On November December 18, 2023,¹ Petitioner filed the instant Motion for Reconsideration of the Court's December 1 Order. [Doc. 6]. He argues that his Petition is cognizable pursuant to Rule 60(b)(4) and (6) and coram nobis, and that the Court erred by failing to judicially notice the underlying facts and to consider his arguments on the merits. He asks the Court to reconsider its Order and to grant him all relief that it deems just and proper. [Id. at 3].

The instant Motion is construed as seeking relief pursuant to Rule 59(e). See Robinson v. Wix Filtration Corp. LLC, 599 F.3d 403, 412 (4th Cir. 2010) (where a request for reconsideration is filed within twenty-eight days after the final judgment, Rule 59(e) controls); see also Fed. R. Civ. P. 59(e) (stating that "[a] motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment"). As a preliminary matter, the Court notes that it has jurisdiction to consider Petitioner's Rule 59(e) motion during the pendency of the appeal of the final judgment order. See Fed. R. App. P. 4(a)(4)(A)(iv) ("If a party files in the district court [a Rule 59 motion to alter or amend the judgment] – and does so within the time allowed by [that rule] – the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion"); Fed. R. App. P. 4(a)(4)(B)(i) ("If a party files a notice of appeal after the court announces or enters a judgment – but before it disposes of any motion listed in Rule 4(a)(4)(A) [including a Rule 59 motion to alter or amend] – the notice becomes effective to appeal

¹ Houston v. Lack, 487 U.S. 266, 276 (1988) (establishing the prisoner mailbox rule); Rule 3(d), 28 U.S.C.A. foll. § 2255 (addressing inmate filings).


a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered”).

A Rule 59(e) motion to alter or amend may only be granted: “(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice.” Mayfield v. Nat’l Ass’n for Stock Car Auto Racing, Inc., 674 F.3d 369, 378 (4th Cir. 2012) (internal quotation marks omitted). “Rule 59(e) motions may not be used to make arguments that could have been made before the judgment was entered.” Hill v. Braxton, 277 F.3d 701, 708 (4th Cir. 2002).

Here, the Petitioner failed to demonstrate that reconsideration is warranted under Rule 59(e). He does not identify an intervening change in controlling law, new evidence that was not available at trial, or a clear error of law; nor has he shown that relief is needed to prevent a manifest injustice. Petitioner merely presents arguments that were, or could have been, presented in his Petition. See Hill, 277 F.3d at 708. He essentially asks the Court consider his claims on the merits notwithstanding that the Court lacks jurisdiction to consider unauthorized second or successive § 2255 petitions, and that relief is unavailable under § 1651. The Petitioner’s disagreement with these conclusions provides no basis for Rule 59(e) relief and the Motion for Reconsideration will, therefore, be denied.

IT IS, THEREFORE, ORDERED that Petitioner’s Motion for Reconsideration [Doc. 6] is **DENIED**.

Signed: April 16, 2024


Robert J. Conrad, Jr.
United States District Judge

